

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Lamar A. Fitzgerald,

Case No. 3:17 CV 1162

Petitioner,
-vs-

ORDER ADOPTING
REPORT & RECOMMENDATION

Warden Mark Hooks,

JUDGE JACK ZOUHARY

Respondent.

In 2015, Petitioner *pro se* Lamar Fitzgerald was convicted of drug trafficking and unlawful sexual conduct with a minor (Doc. 8-1 at 23–24). After unsuccessful appeals in Ohio state court (*id.* at 116, 118, 140), Fitzgerald petitioned this Court for a writ of habeas corpus under 28 U.S.C. § 2254 (Doc. 1).

Fitzgerald's Petition was automatically referred to Magistrate Judge George Limbert under Local Civil Rule 72.2(b)(2) (Non-Doc. Entry 6/20/2017). Respondent filed an Answer (Doc. 8), and Fitzgerald filed a Traverse (Doc. 10). Judge Limbert then issued a Report and Recommendation (R&R), concluding the Petition should be dismissed (Doc. 11 at 1).

This Court reviews *de novo* any portions of an R&R to which a party timely objects. 28 U.S.C. § 636(b)(1). Failure to timely object, however, waives district and appellate court review of the R&R. *See Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995); *United States v. Walters*, 638 F.2d 947, 950 (6th Cir. 1981). This waiver rule applies only if the parties are notified that failure to object results in waiver, *see Walters*, 638 F.2d at 950, and it has few exceptions, *see Vanwinkle v. United*

States, 645 F.3d 365, 371 (6th Cir. 2011) (prevailing party exception); *United States v. 1184 Drycreek*, 174 F.3d 720, 725–26 (6th Cir. 1999) (miscarriage of justice exception).

The R&R notified the parties that failure to object would result in waiver (Doc. 11 at 16). Neither party has objected, and the deadline for objections has passed. This Court therefore adopts the R&R (Doc. 11) in its entirety. The Petition (Doc. 1) is dismissed. There is no basis upon which to issue a certificate of appealability, *see* 28 U.S.C. § 2253(c)(2), and an appeal from this Order could not be taken in good faith, *see* 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

June 26, 2019